

**Internal Revenue Service**

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B03

PLR-102082-13

Date:

July 29, 2013

LEGEND

X =

Sub =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Dear :

This letter responds to a letter dated December 31, 2012, and subsequent correspondence, written on behalf of X, requesting a ruling under § 1362(f) of the Internal Revenue Code.

### Facts

The information submitted states that X was incorporated under the laws of State and made an election to be treated as an S corporation effective Date 1. On Date 2, X purchased all of the outstanding shares of Sub and made an election to treat Sub as a qualified subchapter S subsidiary (QSub) effective Date 3.

X's election was inadvertently invalid on Date 1 because shares of X stock were owned by individual retirement accounts ("IRAs"), ineligible shareholders under § 1361(c)(2)(A). On Date 4, certain IRAs distributed their stock in X to their beneficiaries and on Date 5 X redeemed the remaining IRA shareholders stock.

X represents that the invalid election was not motivated by tax avoidance or retroactive tax planning. X and its shareholders agree to make any adjustments that the Commissioner may require, consistent with the treatment of X as an S corporation.

### Law and Analysis

Section 1361(a)(1) provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1)(B) provides that, for purposes of subchapter S, the term "small business corporation" means a domestic corporation that is not an ineligible corporation and that does not, among other requirements, have as a shareholder a person (other than an estate, a trust described in §1361(c)(2), or an organization described in §1361(c)(6)) who is not an individual.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which it was made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents, or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the event resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation, or (B) to acquire the required shareholder consents, and (4) the corporation, and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such ineffectiveness or termination, the corporation shall be treated as an S corporation during the period

specified by the Secretary.

### Conclusion

Based solely on the facts submitted and the representations made, we conclude that X's S corporation election on Date 1 was invalid, and thus not effective. We conclude that this ineffective election was inadvertent within the meaning of § 1362(f). We further conclude that the ineffective S corporation election was inadvertent within the meaning of § 1362(f).

Under the provisions of § 1362(f), X will be treated as making a valid S corporation election effective from Date 1 and thereafter, provided that X's S corporation election was otherwise valid and has not otherwise terminated under § 1362(d). In addition, Sub will be treated as a QSub from Date 3 and thereafter, provided that Sub's QSub election was otherwise valid and has not otherwise terminated.

As a condition for this ruling, for any tax periods between Date 1 and Date 5 in which X reported a net loss, IRAs will be treated as the shareholders of the shares of stock IRAs held at that time. For any tax periods between Date 1 and Date 5 in which X reported a net gain, the IRA beneficiaries will be treated as the shareholders of the shares of stock held by IRAs. All of X's shareholders, in determining their respective income tax liabilities during the termination period and thereafter, must include their pro rata share of the separately stated items of income (including tax-exempt income), loss, deduction, or credit and non-separately stated computed items of income or loss of X as provided in § 1366, make any adjustments to basis provided in § 1367, and take into account any distributions made by X as provided in § 1368. Additionally, for tax periods between Date 1 and Date 5, X's shareholders agree to amend their tax returns and treat pending refund requests consistent with the treatment described above. If X or its shareholders fail to treat themselves as described above, this ruling shall be null and void.

Except as specifically ruled above, we express no opinion concerning the federal tax consequences of the transactions described above under any other provisions of the Code, including whether X was or is a small business corporation under § 1361(b) or whether Sub is otherwise eligible to be a QSub.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. Pursuant to a power of attorney on file, a copy of this letter is being sent to X's authorized representatives.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

Sincerely,

Stacy L. Short  
Senior Technician Reviewer, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2):

A copy of this letter  
A copy for § 6110 purposes

cc: